

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Ex parte Heinen

Serial No.: 10/775,795
Filed: February 10, 2004
Art Unit: 1733
Examiner: Steven D. Maki
Applicant: Richard Heinen
Title: ELONGATED BLOCK TIRE TREAD
Attorney Docket: 2004013
Confirmation No.: 9693

October 30, 2007

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

I hereby certify that this correspondence is being
filed electronically on the 30th day of October,
2007.

/Robert N. Lipsik/

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Appellant hereby files this Reply Brief in response to the Examiner's Answer mailed September 21, 2007. The Commissioner is authorized to charge any additional filing fees which may be required or to refund any overpayment to Account No. 07-1725.

REMARKS/ARGUMENTS

This Reply Brief responds to the Examiner's Answer mailed on September 21, 2007. Please further consider the following arguments:

First, Appellants acknowledge that the USPTO has issued new Examination Guidelines subsequent to the filing of the Appeal Brief in this case. Appellants further acknowledge that the majority of the arguments in the Appeal Brief were directed to the seventh rationale of the Guidelines for supporting an obviousness rejection, the previously exclusive TSM test.

It is respectfully submitted that the arguments of the Appeal Brief are equally applicable to whether the modifications proposed by the Examiner would have been conducted by one of ordinary skill in the art because of the predictability of the results of such modifications. If one of ordinary skill in the art would not have been motivated to modify either the Europe 456 reference or the Japan 413 reference, how could one of ordinary skill in the art been led to the necessarily subsequent step of predicting the results of an unmotivated modification?

Second, if the Board has not been persuaded to withdraw the rejections of the claims, Appellants respectfully request that the Board remand this case to the Examiner so that this case may be fairly examined under the new Examination Guidelines, which have been issued subsequent to both the Appeal Brief and the Examiner's Answer.

Respectfully submitted,

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